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Supreme Court, U.S.
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No. 08-795 DEC 11 2008

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In The Supreme Court of the United States

SAMUEL T. BISTAWROS,

Petitioner,

v.

RODOLFO LICEA,

Respodnent.

On Petition For Writ Of Certiorari To The Supreme Court Of Virginia

PETITION FOR WRIT OF CERTIORARI

SAMUEL T. BISTAWROS
1793 Ivy Court
Woodbridge, VA 22191
(703)492-2438

Petitioner in Pro Se

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Supreme Court of Virginia in case of assault and battery and personal injury fails to provide due process of law, and equal protection of law, and if violates the Fourteenth Amendment to the Constitution of the United States.

2. Whether the Supreme Court of Virginia abused its discretion in the last order and three previous orders without stating the reasons in writing of its opinion and preserved with the record of the case in Petitioner's Petition for Appeal.

3. Whether the decision of Supreme Court of Virginia creates a precedence that violates due Process of law and creates a dangerous public policy.

4. Whether a judge's intentional and knowing contravention of existing mandatory, nondiscretionary, statutes violates the "good behavior" clause of the United States Constitution and thereby makes the protection of judicial immunity unavailable.

5. Whether a judge's intentional and knowing contravention of existing mandatory, nondiscretionary, statutes constitutes "bad behavior," making the award of judicial immunity unavailable.

6. Whether Patricia L. Harrington, Clerk of Supreme Court of Virginia made up the Orders in

Petitioner's Appeal? And Whether Chief of Deputy Clerk Douglas Robelen, Lesley David, Ebby Edwards, Deputies Clerk were involved with the Clerk in such orders? And Whether the Clerk delivered to the Court Petition for Appeal with the record of the case?

7. Whether Justices of Supreme Court of Virginia are corrupt and malicious and treated Petitioner Pro Se injustly, unequally and maliciously injuring him?

8. Whether Justices of Supreme Court of Virginia did not followed the rules of law but rather followed their own ferocity with disregard Petitioner's human rights.

9. Whether Justices of Supreme Court of Virginia reviewed and heard Petitioner's joint Appeals and rehearing or randomly denies his appeal without stating a reason.

10. Whether Justices of Supreme Court of Virginia victimized Petitioner which was manifested in their willful disregard to the American rules of law and if such misconduct constituted a dictatorship and tyranny.

11. Whether Petitioner will find justice in the Supreme Court of Virginia or any other Court in the of Commonwealth of Virginia without the intervention of the United States Supreme Court, otherwise he will spend the rest of his life suffering from injustice inequality, persecution, oppression in America.

PARTIES TO THE PROCEEDINGS

All parties to the proceedings appeal in the caption of the case on the cover page.

OPINION BELOW

This case originated in the Circuit Court of Prince William County, Virginia, case number CL73524. The trial court issued its judgment in this case on February 15th, 2008 dismissing Petitioner's Fist Amended Motion for Judgment with prejudice. A copy of that ruling is attached hereto as Appendix 1. On September 18th, 2008, the Supreme Court of Virginia, in rehearing Petition for Appeal, Record No. 080926 issued its opinion affirming the Circuit Court's decision without stating any reason in violation of Virginia Constitution. A copy of that opinion is attached hereto as Appendix 2.

STATEMENT OF JURISDICTION

The Supreme Court of Virginia entered opinion on September 18th, 2008. An order denying rehearing of Petitioner's appeal. This Court has jurisdiction pursuant to 28 U.S.C. § 1254. Petitioner recognizes that this Court rarely grants Petition for a Writ of Certiorari. However, this case is extraordinary.

STATUTES AND RULES INVOLVED

The Notice of Motion for Judgment:

Rule 3:3 of Supreme Court of Virginia states in pertinent part: "(A) Commencement of Actions. — An action shall be commenced by filing in the clerk's office a motion for judgment. The action is then instituted and pending as to all parties defendant thereto.

Causes of Action: Count One Assault

and battery. Code of Virginia §§ 18.2-57... states in pertinent part:

"A. Any person who commits . . . assault and battery shall be guilty of a class 1 misdemeanor"

Aggravated malicious wounding: Code of Virginia §§ 18.2-51.2 states in pertinent part:

"A. If any person shoots stabs, cuts or wounds any other person, or by any means causes other means causes bodily injury, with the intent . . . , he shall be guilty of a Class felony if the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment."

Certification of an Expert Witness:

Code of Virginia § 8.01-401.3 states:

"A. In a civil proceeding, if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise."

Dr. Brian Stephens, MD, Orthopedic, a qualified medical expert diagnosed and signed a medical report.

Amendment to Motion for Judgment:

Rule §§ 7A:9 of Supreme Court of Virginia states: "No amendment shall be made to any pleading after it is filed with the clerk, except by leave of court. Leave to amend shall be liberally granted in furtherance of the end of justice."

STATEMENT OF THE CASE

On December 18, 2006, Petitioner was passing a letter in front of Wal-Mart Store in Woodbridge, Virginia protesting the abusive treatment of Christ Chapel Assembly of God to him while he was working as a teacher.

First Amendment to U.S. Constitution protects Petitioner of free speech. And all the sudden, at about 5:30 p.m., Petitioner saw a blue car which was speeding about 30 miles per hour and stopped in front of him who was standing with some employees of Wal-Mart Store on the sidewalk. The Respondent got out of the car and ran as a mad and senseless man and attacked Petitioner and pulled his letters and his left arm with a physical force. Respondent assaulted and battered Petitioner injuring his left shoulder. See Pike v. Eubank, 197 Va. 692, 90 S.E.2d 821 (1956).

In case of David M. Bowie v. Record No. 050728 James T. Murphy, Jr., et al., the court stated in a relevant part: "To prove assault, a plaintiff must show that the defendant "performed an act intended to cause either harmful or offensive contact with another person or apprehension of such contact, and that creates in the other person's mind a reasonable apprehension of an imminent battery. There is no requirement that the victim of such acts be physically touched." Etherton v. Doe, 268 Va. 209, 213, 597 S.E. 2d 87, 89 (2004); Koffman v. Garnett, 265 Va. 12, 16-17, 574 S. E. 2d 258,261 (2003); Carter v.

Commonwealth 269 Va. 44, 47, 606 S. E. 2d 839, 841 (2005).

"Battery is the actual inflection of corporal hurt on another . . . willfully or in anger , whether by the party's own hand, or by some means set in motion by him." Jones v. Commonwealth, 184 Va. 679, 682, 36 S. E. 2d 571, 572 (1946). "The slightest touching of another . . . If it is done in a rude, insolent, or angry manner, constitutes a battery for which the law affords redress. Adams v. Commonwealth, 33 Va. App. 463, 469, 534 S. E. 2d 347, 350 (2000). "If the act was done with reckless and wanton disregard for the lives and safety of others, the law would impute to the defendant an intent to do bodily harm and he would be guilty of assault and battery." Banovitch v. Commonwealth, 196 Va. 210, 219, 83 S. E. 2d 369, 374-75 (1954)."

Respondent admitted that he knew in advance where Petitioner was on December 18, 2006, when claimed that he was in a meeting at Christ Chapel, so he preplanned his violent acts against Petitioner, and he came to Petitioner and attacked him.

Petitioner has been suffering from pain in his shoulder and On or about December 21st, 2006, Petitioner

met with Doctor Albert Cheung, MD. who he referred him to Orthopedic Physician.

On December 30, 2006, at about 2:00 p.m., Petitioner went to Emergency of Potomac Hospital located at 2300 Optez Boulevard, Woodbridge, Virginia 22191. Petitioner did different tests to his left shoulder and his neck, and after five hours he was released On January 8, 2007, at 2:30 p.m., Petitioner met with Michael B. Halle, MD., Dr. Halle examined his left shoulder and ordered an X-ray.

On January 12, 2007, at 1:30 p.m., Petitioner met with Brian O. Stephens, MD, Orthopedic. Dr. Stephens looked at the X-ray of his left shoulder and found an injury to left shoulder. Dr. Stephens injected Petitioner's left shoulder which eased the pain to some degree. Brian Stephens, MD, FACS

Orthopaedic Surgeon, wrote Verification of Treatment to Petitioner:

"Left Shoulder [1]Sprain with Evidence of Calcific

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1. In Wor[illegible] of the Body OXFORD UNIVERSITY PRESS: Sprains: Any injury caused when a joint is moved beyond its normal range of movement, . . Sprain usually arise from a sudden forceful movement that damages a joint capsule and the ligaments that tie together the bones in the joint. Damage to the joint tissue results in

Tendinitis ", Sub Acromial Space, Injection Today, may require repeat injections as necessary for recurring pain."

Respondent Rodolfo Licea knowingly and willfully assaulted and battered Petitioner injuring him and he used his ultimate force in pulling petitioner's left arm.

Bannister v. Mitchell, 127 Va. 578, 104 S.E. 800 (1920) is a civil action for damages for injury and there is an intent to injure particular person who is injured and when the one who commits a wanton, reckless and dangerous act such as shooting into a crowd, is guilty of assault and battery, although he has no specific intention of injuring any particular person. See Harper, 196, Va. at 733, 85 S.E.2d at 255; Merit v. Commonwealth, 164 Va. 653,

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pain, swelling, and some loss of function.

Sprain is an injury which occurs to ligaments caused by being stretched beyond normal capacity and possibly torn. In cases where either ligament or muscle tissue is torn, immobilization and surgical repair may be necessary. Tendon is a tough band of fibrous connective tissue that usually connects muscle to bone and is capable of withstanding tension. Tendons are similar to ligaments except that ligaments join one bone to another. Tendons and muscles work together and can only exert a pulling force.. . much research has focused on the elastic properties of tendons and their ability to function as springs. This allows tendons to passively modulate forces during locomotion, providing additional stability with no active work. It also allows tendons to store and recover energy at high efficiency. From Wikipedia, the free encyclopedia.

658, 180 S.E. 397 (1935).

Samuel T. Bistawros filed a motion for judgment in the Circuit Court of Prince William County, Virginia on February 5th, 2007. And on May 14th, 2007, Petitioner filed First Amended Motion for Judgment. The Circuit Court overruled Respondent's demurrer to First Count of Willful assault and battery injuring Petitioner on December 18, 2006. The Court sustained demurrer to the second and third Counts. Following this Order, Respondent filed an answer to first amended motion for judgment.

The trial of the case was set for two days, February 11 & 12, 2008. Expert Qualified Witness for Petitioner was scheduled to testify on February 12, 2008. But the trial court cut short the trial time without the key testimony of a qualified expert witness, Dr. Brian Stephens, MD, Orthopedic. On February 15, 2008, the Court entered its final judgment dismissing First Amended Motion for Judgment with prejudice.

Respondent filed several motions for attorney's fees which were fraudulent, excessive, unreasonable and unnecessary. But the trial Court awarded Respondent attorney's fees.

Bruce A. Gross, Attorney for Respondent started his opening statement in the trial hearing on February 11, 2008, at 10:00 a.m. and said that Petitioner was paranoid and did not have a job and he admitted that he was disabled and he made a living by filing lawsuits against innocent people. Such statement was false, malicious, slanderous and a defamation of Petitioner's character and reputation. Petitioner requested from trial Judge Potter to strike this slanderous statement but he denied his request. See State v. Nuckolls, 273 S.E.2d 87 (W. Va. 1980) the court granted a new trial because of prosecutor's comment during argument to the jury which was prejudicial and inflammatory conduct warranting a new trial."

NEW TRIAL SHOULD HAVE BEEN GRANTED

On February 20th, 2008, Petitioner filed a motion for new trial pursuant to Code of Virginia §§8.01-383
He stated a ground for this motion pursuant to Rule 1:1 of Supreme Court of Virginia. There was a new discovered evidence subsequent to the trial which would produced

opposite results. Petitioner stated in his motion for new trial that Respondent and his witnesses testified that he parked his car about Thirty (30) Feet from Petitioner when he went to Wal-Mart. On Tuesday, February 12, 2008, at 3:00 p.m., Petitioner and his brother Baheg Bistawros went to Wal-Mart Store in Woodbridge, Virginia and measured this area in front of the store's side walk where Respondent claimed he parked his car. The measurement was over thirty-one (31) feet wide and Seventy-three (73) and six (6) inches long and it was marked with lines of a yellow paint. This area was no parking zone and according to Respondent that if he parked his car in this area, he would blocked the traffic of vehicles going out or coming in which was illegal. Such discovery would produced opposite results on the merit of another trial.

In case of Tweed v. Commonwealth, 44 Va. App. 363, 550 S.E.2d 345 (2001), the court stated in part:

"A party who seeks a new trial based upon after-discovered evidence bears the burden to establish that the evidence (1) appears to have been discovered subsequent to the trial, (4) is material, and such as should produce

opposite results on the merits at another trial." But on February 29th, 2008, the trial court denied motion for new trial.

See Commonwealth v. Tweed, 264 Va. 524, 570 S.E.2d 797 (2002); Johnson v. Commonwealth, 41 Va. App. 37, 581 S.E.2d 880 (2003); United States v. Fulcher, 250 F.3d 244 (4th Cir. 2001); United States v. Dworkin, 116 F. R. D. 29 (E.D. Va. 1987).

Petitioner filed a Statement of Facts in Lieu of Transcript pursuant to Rule 5:11 of Supreme Court of Virginia which states in pertinent part:

"Transcript or Written Statement provides in pertinent part:

Written Statement. In lieu of a transcript, a written statement of facts, testimony, and other incidents of the case, which may include or consist of a portion of the transcript, becomes a part of the record when:

The judge's signature on a transcript or written statement... shall constitute his certification that the procedural requirements of this Rule 5:11 have been satisfied."

On March 28, 2008, the trial Court denied Petitioner's statement of facts in lieu of transcript and ordered its final judgment to be a statement of facts which was in favor of Respondent and against Petitioner.

On March 6th, 2008, Petitioner filed a notice of appeal of final judgment of the court including attorney's fees on March 28, 2008.

Petitioner filed a petition for appeal on May 7th, 2008 and a Reply brief on June 5th, 2008. Petitioner received from the Clerk of Supreme Court of Virginia a copy of an Order dated June 19th, 2008 denies motion for emergency hearing for injunction of trial court order pending appeal. Second Order dated July 14th, 2008 denies motion to vacate Order of trial court pending appeal. Third Order dated July 31st, 2008, refuses the petition for appeal. Fourth Order dated September 18th, 2008, denies a rehearing petition to strike Respondent's appendix pending appeal but on July 1st, 2008, Petitioner talked via telephone to Douglas Robelen, Chief Deputy Clerk and asked him about Respondent's appendix. He looked at the file and said that there was no appendix. And attorney for Respondent confirmed that finding and it was an error in

certificate of service.

MOTION OF DISQUALIFICATION OF TRIAL JUDGE RICHARD B. POTTER

On May14, 2007, Petitioner filed a motion of disqualification of trial Judge Richard Bowen Potter. And on August 31st, 2007, the Court denied said motion by Judge Potter after about one-hundred twenty (120) day of filing this motion.

A. Judge Richard Bowen Potter gave False Legal Advice to Petitioner

On April 20th, 2007, Judge Potter said to the Petitioner that he could not stated intentional tort as a Cause of Action in his Motion for Judgment which was not true, misleading and illegal. Judge Potter must not gave any legal advise, wrong or right to Petitioner. This was another clear and concrete evidence that Judge Richard B. Potter was prejudice partial and bias against Petitioner. And he violated Canons 1, 2, 3, of Judicial Conduct for the Commonwealth of Virginia.

B. Judge Potter Set-up Petitioner in attempt to Frame him

On April 20th, 2007, at 9:45 a.m., Petitioner arrived to the Courthouse in Manassas, Virginia and passed through security-machine in about two minutes. When he went to the Courtroom #5 of Judge Potter for the hearing of his motions. Petitioner found another scanning machine in front of his Courtroom. Petitioner asked one of Deputy Sheriff: "Why is the Security- scanning machine here?" He said: "The Judge ordered it." referring to Judge Richard Potter. While Petitioner was waiting outside saw four women and two men came out from the Courtroom. Then Sergeant McKoy, Deputy Sheriff said: "All Attorneys come first." Petitioner asked him: "Why are the Attorneys come first?" He said that this is the way he do it." When Sergeant McKoy, scanned Petitioner's bag, he asked other Deputy Sheriff to search his bag. He handed a small plastic bag to Sgt. McKoy and passed it again through the Scanning- machine and he said: "It is diskettes." Petitioner was the only one that two security officers including Sgt. McKoy searched his bag by hand of every single item in it.

Processing Petitioner's bag took about fifteen (15)

minutes on the Third floor in front of the Courtroom of Judge Potter while other individuals passed through the Scanning machine with their bags in one or two minutes.

When Petitioner saw Security officers like McKoy and other Deputies Sheriff singled him out and searched his bag item by item, like being a suspect or a target he felt uncomfortable, humiliated and embarrassed which could upset any reasonable person but he was patient and quiet through this unnecessary long process.

Judge Potter under his instruction, ordered to place a security-scanning machine and some Security officers in front his Courtroom to single Petitioner out of all individuals entered his courtroom. There were other five courtrooms and there was no Security scanning- machine in front of any of them. Judge Potter violates Petitioner's civil rights under Virginia Constitution, Art. 1 , and under the Fourteen Amendments to United States Constitution and under civil rights statutes (42 USCS 1981-1983, 1985.

Judge Potter used his administrative power to threaten Petitioner and does not justify absolute immunity under United States Constitution. He used his administrative authority to use some deputies Sheriff for

such scheme. Judge Richard B. Potter violates the public trust in the court system, dishonored his judicial office which creates in reasonable minds a perception that Judge Potter's ability to carry out judicial responsibilities with integrity and impartiality was impaired in violation of Judicial Conduct for the Commonwealth of Virginia, Canon 1, 2 (A), 3 (a) (B) & (E).

U.S.C. Title 28 § 455 states:

"(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might be reasonably be questioned.

(B) He shall disqualify himself in the following circumstances:

(ii) Is acting as a lawyer in the proceeding;

(d)1. proceeding" includes pretrial, trial, appellate review, or other stages of litigation.

C. Trial Judge Potter Knowingly and Willfully Failed to Protect Petitioner from Assault and Battery in his Courtroom

On Friday, October 26th, 2007, Petitioner had a

hearing of his motions in Courtroom of Judge Potter as well the Respondent. While Petitioner was standing behind Plaintiff's table talking to Judge Potter, the Bailiff, Deputy Sheriff Kevin Rock approached Petitioner and pushed his right hard against Petitioner's right hand which constituted assault and battery under Code of Virginia § 18.2-57. The Bailiff Rock not only injured Petitioner but also interrupted him while he was stating his oral argument. Petitioner complained to Judge Potter that the Bailiff Kevin Rock assaulted and battered him injuring him in the Courtroom. Judge Potter said that this was out of his jurisdiction. Trial Judge Potter knowingly and willfully failed to protect Petitioner's human rights under Fourteenth Amendment to U.S. Constitution. Bailiff Rock was under his administrative capacity, so Judicial immunity was unavailable.

Judicial Conduct for the Commonwealth of Virginia, Canon 3B (3) provides in pertinent part:

"A judge shall require order, decorum, and civility in proceedings before the judge.

Commentary: "Require." The rule prescribing that a judge "require" certain conduct of others are, like all

rules in these Canons, rules of reason the use the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control."

Amendment 14 to U.S. Const. states in pertinent part:

"1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any States deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

D. Judge Potter Took the Day off of Hearing Petitioner's Motions

On August 7th, 2007, at 4:32 p.m., Petitioner had a message from the Law Clerk Pia Miller to judge Potter to call her back regarding his case. phone: 703-792-6010."

On August 8th, 2007, at 9:00 a.m. Petitioner talked via telephone to Ms. Miller who said that Judge Potter would not be in Court on Friday, August 10th, 2007. Petitioner asked her: "Is Judge Potter on vacation?" She said: "He took the day off." The last hearing of Petitioner's motion for judgment was on April 20th, 2007 and the next hearing was on August 31st, 2007, it was One Hundred thirty three (133) days between. Such delay was a miscarriage of justice.

But when Petitioner talked via telephone to Tara Livingston, , Deputy Clerk about his date of hearing on August 10th, 2007. She looked at the docket of August 10th, 2007 and said to Petitioner that Judge Potter would heard criminal and civil cases that day which contradicted statement of Pia Miller, his law clerk.

On August 10th, 2007, at 10:15 a.m., at Circuit Court, third floor, Petitioner and his brother Baheg found that the docket of Judge Potter was removed from the board on a wall. And found the door of Courtroom of Judge Potter was opened, the lights were on but there was no body there. Canons of Judicial Conduct for the Commonwealth of Virginia, Canon 3B (8) provides in pertinent part:

"A judge shall dispose promptly of the business of the court.

Commentary: "In disposing of matter promptly, a judge must demonstrate due regard of the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay."

CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED

U.S., Article 3, Section 1 reads in pertinent part: "The Judge, both of the supreme and inferior Courts, shall hold their Offices during good behavior, . . .Id.

U.S. Const., Article 6, cl. 2.

Clause 2 of Article VI reads in pertinent part: "This Constitution, and the Laws of the United States which shall made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

U.S. Const., The First Amendment provide in pertinent part:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law."

U.S. Const., The Fifth Amendment provides, in pertinent part:

> "No person shall . . . be deprived of life, liberty, property, without due process of law."

U.S. Const. Section 1 of the Fourteenth Amendment U.S. Constitution reads in pertinent part:

> "No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Constitution of Virginia Article I:

> Bill of Rights: A Declaration of Bill of Rights made by the good people of Virginia in the exercise of their sovereign powers,

which rights do pertain to them and their prosperity, as the basis and foundation of government."

And Article VI, Section 1. Equality and rights of men provides:

"That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

Article VI, Section 6. of Virginia Constitution: Opinions and judgments of the Supreme Court states:

"When a judgment or decree is reversed, modified, or affirmed by the Supreme Court, or when original cases are resolved on their merits, **the reasons for the Court's action shall be stated in writing** and

> preserved with the record of the case. The Court may, but need not, remand a case for a new trial. In any civil case, it may enter final judgment, except that the award in a suit or action for unliquidated damages shall not be increased or diminished."

The question in this case is whether the doctrine of judicial immunity can be used to strip Petitioner of his First Amendment right to petition, and to seek redness for his grievances. This doctrines nullify the plans of the Framers of both the Virginia and United States Constitutions to assure that judges behave well, that the public may petition and seek redress, that the laws will not be suspended except as provided in the Constitutions, that all magistrates and officers of the three branches of the government shall be accountable to the people at all times. U.S. Const. First, Fifth, and Fourteenth Amendments. Virginia Const., Bill of Rights, Art. I, Sections 1, 2, & 3.

By applying this doctrine across the nation on almost every case, the public brings against its government or officers thereof rendered meaningless the Framers" plain and express intent to restrict bad

behavior.

The notion that a violation of the plain language of the Constitution can gain legal stature by long-continued practice is not one can subscribe to. A majority group, as de Tocqueville observed, too often "claims the right not only of making the laws, but breaking the laws it has made." De Tocqueville Democracy in America, Vol. 1, at 261.

If any court in any capacity knowingly and intentionally acts in such a way that deprives Petitioner of his rights without due process of the law, there must be accountability and liability. The keywords are, of course, knowingly and intentionally. Petitioner is not implying that judges should be liable for mistakes. A mistake is one thing, and intentional act that the actor knows deprives a party of constitutional rights is another. It is that distinction that appears to be an issue of first impression. There is a significance distinction between a judge"s mistake and a judge's knowing and intentional act that deprives a party of his or her constitutional rights. It is that distinction, as noted, that appears to be an issue of first impression.

In case of Scott v. Rutherfoord, 30 Va. App. 176, 516 S.E.2d 225 (1999), a decision regarding a judge impartiality in the exercise of his or her discretion would be reversed on appeal upon a finding that the court abused its discretion.

See Judicial Inquiry and Review Commission v. Archie Elliott, Judge, Record No. 051990, 264 Va. 401, 403, 568 S. E. 2d 687, 688 (2002); Judicial Inquiry and Review Commission v. Peatross, 269 Va. 428 n. 611 S. E. 2d 392, 394 n. 1 (2005); In re. Ruffalo, 390 U. S. 544, 551-52 (1968); Wisconsin v. Constantineau, 400 U. S. 433, 437 (1971); Paul v. Davis, 424 U. S. 693, 730 (1976); Goss v. Lopez, 419 U.S. 565, 574-75; Green v. Dostert, 172 W. Va. 222, 304 S.E.2d 675 (1983); Myers v. Painter, 213 W. Va. 32, 576 S.E.2d (1983); Broady v. Com., 16 Va. App. 281, 429 S.E.2d 468 (1993); In re Deming, 736 P. 2d 639, 648 (Wash.1987).

Justices of Virginia Supreme Court violated the Constitution of Virginia and U.S. Const., Article 6, cl. 2. Clause 2 of Article VI.

Virginia Constitution, Art. VI, Sec. 4 places upon the Chief Justice of Supreme Court of Virginia the responsibility of supervising the administration of the

entire court system of the Commonwealth. Chief Justice Hassell failed to act to assure that the judges under his management complied with the statutes. He also failed to oversee the justices, one of his explicit duties set out by statute -- and send them for training if necessary. Immunity was inapplicable. The State Justices did not follow the due process of law of civil procedure in Petitioner's appeal but rather followed their own ferocity with disregard to Petitioner's human rights.

The Professional Misconduct of Patricia L. Harrington, Clerk of Supreme Court of Virginia

Petitioner believes that the Clerk of the State Court took the position of the Court and made up orders in Petitioner's appeal or/and the Justices and wrote the orders without stating any reason or ground pursuant to Virginia Constitution, Art. VI, Section 6.

On June 30th, 2008, at about 10:30 a.m. Petitioner talked via telephone to Patricia L. Harrington, Clerk and he said to her: "If I give you the record number will you give me the names of Justices of the Panel? She said that she would look at the file.

Then she changed her mind and said: "We are not allowed to give their names." He said to her that if he wanted to file a motion of disqualification of a Justice(s) he would needed to know each name. Her answer was that Petitioner would wrote to the Clerk and she would forwarded to the Justices. She added that this was the policy of the Court for the last twenty (20) years. What she said to him was beyond any logic or common sense.

Petitioner wrote a complaint to Chief Justice Hassell about the misconduct of Ms. Harrington, Clerk as well to Gregory E. Lucyk, Chief Staff Attorney and Karl R. Hade, Executive Secretary but he did not hear from any one of them.

On July 1st, 2008, Petitioner talked via telephone to Douglas Robelen, Chief Deputy Clerk about his complaint against the Clerk to Chief Justice Hassell. He said that he delivered the complaint to the law Clerk of Chief Justice. Petitioner asked about the name of this Clerk. He said: "I am not in liberty to give you his name." Mr. Robelen said also that he delivered Petitioner complaint against the Clerk of the Court to Mr. Lucyk, Chief Staff Attorney. Petitioner asked Mr. Robelen to write him a letter stating

what he said but said that he was busy and he did not have time to write such letter.

Appellate Court Clerks Code of Professional conduct, CANON I, states in relevant part: "An Appellate Court Clerk Should Maintain the Highest Standard of Professional Conduct in the Performance of Duties. An independent and honorable judiciary is indispensable to justice in our society. Appellate court clerks participate in establishing, maintaining, and enforcing the law, and should themselves observe high standards of conduct so that the integrity, impartiality.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Samuel T. Bistawros respectfully petitions for a writ of certiorari to review the order of the Supreme Court of Virginia denying a rehearing of his petition for Appeal. In plain contravention of the requirement of the Constitution of the United States, federal law, the Constitution of the Commonwealth of Virginia, and State law, the State Courts have embarked on an ad hoc, standards, subjective, arbitrary, and lawless

exercise of judicial power, which appears designed to thwart the will of the petitioner (and other members of the public similarly situated).

REASONS FOR GRANTING THE WRIT

I. Review Is Warranted Because the Courts Below Disregarded the Constitutional Demand for Judicial Good Behavior

The question in this case is whether two judicially-created doctrine — the doctrine of judicial immunity and the doctrine of the second prong of the Eleventh Amendment" – can be used to strip Petitioner of his First Amendment right to petition, and to seek redress for his grievances.

The doctrines nullify the plans of the Framers of the Virginia and United States constitutions to assure that judges behave well, that the public may petition and seek redress, that the laws will not be suspended except as provided in the constitutions, that all magistrates and officers of the three branches of government shall be accountable to the people at all times. U.S. Const. First,

Fifth and Fourteen Amendments and Virginia Const. Decl. of Rts, Arts I, VI.

By applying the two doctrines across the nation on almost every case the public brings against the government or the officers thereof rendered meaningless the Framers' plain and express intent to restrict bad behavior.

II. Review Is Warranted Because Accountability and Liability Are Being Evaded

This case is about (a) the limit of judicial power under both the United States and Virginia constitutions, which explicitly state that judges can hold office "during good behavior," (b) the failure of the federal and state judiciary to define what constitutes "good behavior," © the resulting evasion of accountability and (d) the subsequent unlawful defeat of meritorious petitions by the public, all against the public good by defeating the First Amendment right to petition.

The Judicial Inquiry and Review Commission of Virginia (the Commission) filed a Complaint against James Michael Shull, Judge of the Thirtieth Judicial

District, pursuant to the original jurisdiction of Supreme Court of Virginia set forth in Article VI § 10 of the Constitution of Virginia and Code of Virginia § 17.1-902. The Commission alleged that its charges against Judge Shull for allegedly violating the Canons of Judicial Conduct (the Canons) are well founded in fact, and that the violation are of sufficient gravity to require that this Court censure or remove him from office. On December 20, 2006, the Commission issued an order pursuant to Code of Virginia § 17.1-911 (A) and (c), suspending Judge Shull from the exercise of his judicial powers. The suspension initially arose from two incidents that occurred at a custody and visitation hearing over which Judge Shull presided. Judge Shull was removed from the office of Judge because of his bad behavior.

U.S. Const., Article 3, §§1.

While many cases do, indeed, acknowledge the constitutional mandate that "good behavior" is the bright blue line between a "good" judge and a "bad" judge, the standard for determining what constitutes "good behavior" is rarely discussed in either federal or state opinions.

Petitioner Bistawros complains from State Judges

who intentionally failed to follow mandatory, nondiscretionary, statutes, and thus depriving him of due process, to wit, notice and an evidentiary hearing. No legislature contemplated judges would intentionally not follow mandatory statutes.

Section 176 of 28 U.S.C. reads in pertinent part, "Removal of a judge of the United States Court of Federal Claims during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, engaging in the practice of law, or physical or mental disability."

Even in Mcallister v. United States, 141 U.S. 174, 180, 187, 196 (1891), which traced the early history of "good behavior" in this context [id., at 194-197], the Court failed to address the types of behavior that would be deemed "not good." There are, of course, a few exceptions, such as Chandler v. Judicial Council Tenth Circuit, 398 U.S. 74, 77 (1970), which disclosed in the dissent that "[w]illful misconduct in office or willful and persistent failure to perform his official duties by a judge of the United States shall constitute conduct inconsistent with the good behavior required by article III of the Constitution and

shall be cause for the removal of that judge."

Petitioner"s argument has been that judge's intentional failure to follow mandatory, nondiscretionary, statutes is not good behavior. Those acts of intentionally failing to comply, as legislatures contemplated, with duly ratified statutes not only deprived petitioner of due process, to wit, notice and an evidentiary hearing, those intentional wrongful acts, Petitioner argues, deprive the judges of the protection of absolute judicial immunity.

By so doing, the judges also unlawfully suspended the Laws, in contravention of article I of the Virginia Bill of Rights.

The harm has been irreparable to petitioner. It should also be that the judges.'s accountability and redress, which the Framers of the Virginia Constitution, Bill of Rights contemplated in articles I and VI, are required. There appear to be no cases, either state or federal, which attempt to address the conduct of judges who intentionally circumvent existing statutes.

The failure of the state judges to "behave themselves well" during office and the failure of the federal

judiciary to acknowledge the complained-of behavior as "bad behavior" is encouraged by the unwavering adherence to the repugnant doctrine of judicial immunity.

That doctrine arose out of the most reviled court in British history, the Star Chamber, and allows judges to remain in office and/or to escape being accountable to the public even when they are acting either maliciously or corruptly. Floyd and Barker, 12 Co. Rep. 23, 25, 77 Eng. Rep. 1305, 1307 (1607) (case of conspiracy). Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 347 (1871). Stump v. Sparkman, 435 U.S. 349, 355-356 (1978).

In Bradley, the Court illustrated the distinction between lack of jurisdiction and excess of jurisdiction with the following examples: . . . if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune.

Stump, at 357 n. 7, citing Bradley, at 352. The key word "knowingly" is missing from both Bradley and Stump. From the omission, one can infer that the judge knew what he was doing, i.e., that the judge knew there

was no crime committed, and that, therefore, the word "knowingly" was implied. To convict knowingly an innocent man of a non-existent crime is unconscionable, if not unconstitutional. Given the rationale of the roots of the doctrine of judicial immunity must be abandoned.

The untenable excuse is that were judges to be reined in and made liable, their independence would be jeopardized. This excuse defies common sense. It allows judges not only to remain unaccountable but also to continue to be malicious and corrupt. This is unacceptable to the large majority of the American public, who justifiably believes the courts are broken.

It is more likely that the Framers of both constitutions — that of the Commonwealth of Virginia and that of the United States — did not believe malicious or corrupt acts to be synonymous with "good behavior."

The American Colonists were not willing, nor should we be, to take the risk that "(m)en who injure and oppress the people under their administration (and) provoke them to cry out and complain" will also be empowered to "make the very complaint the foundation for new oppressions and prosecutions." The Trial of John

Peter Zenger, 17 Howell's St. Tr. 675, 721-722 (1735) (argument of counsel to the jury). To impose liability for critical, albeit erroneous or even malicious, comments on official conduct would effectively resurrect "the obsolete doctrine that the governed must not criticize their governors."

New York Times Co. v. Sullivan, 376 U.S. 254, 300 (1964) (citations omitted). By Declaring the Commonwealth and Judges Not "Persons"

To allow the Commonwealth and the judges to avoid liability and accountability, the federal courts declared that the Commonwealth and the judges are not "persons" subject to suit under those federal civil rights statutes."

A similar result has been conceded in this Court: "[T]he expressed intent of Congress, manifested virtually simultaneously with the enactment of the Civil Rights Act of 1871, was that the States themselves, as bodies corporate and politic, should be embraced by the term "person" in sec. 1 of that Act." Quern v. Jordan, 440 U.S. 332, 355-357 (1979).

Similarly, according to Mr. Justice William Douglas, who traced the legislative history of §§1983 (in

Cong. Globe, 42d Cong., 1st Sess.), congressional intent was to hold judges, as well as every other person, liable for the deprivation of a citizen"s civil rights. "There was no exception for members of the judiciary." Pierson v. Ray, 386 U.S. 547, 563 (1967) (Douglas, J., dissenting).

Accountability at all times by all three branches of government to the people, of which he is one. Nor may it supercede the Fourteenth Amendment, duly ratified 22 years prior to the grenade thrown at the civil rights of individuals in Hans. Nor may it override the plain language of §§1983, enacted to enforce the provisions of the Fourteenth Amendment. Nor may it overrule the intent of Congress not to afford immunity to those judges who deprive citizens of their civil rights.

III. Review is Warranted Because the Conflict Between the Judicially-Created Law and the Constitution Must Be Resolved

By not having an existing statute or a constitutional provision upon which judicial immunity or the second prong of the Eleventh Amendment are based, and no ordinary constitutional analysis -- using strict or

intermediate scrutiny or a rational basis test -- of the facts of the case or of Petitioner's legal arguments, the decisions below leave unsettled the critical conflict between the judicially-created law and the constitutions. This Court, therefore, should grant review in this case to resolve this conflict.

If this Court re-cements the rule that judges are absolutely immune from challenges except when there are criminal circumstances and a total absence of jurisdiction, the decision would not only short-circuit this and any other Petitioner's First Amendment rights, even in the face of "judicial bad behavior," it would also short-circuit the "good behavior" clauses in both the state and federal constitutions.

Where judicial immunity and the second prong of the Eleventh Amendment have never been scrutinized and cannot be attributed to the Framers or t any Congress, the application of the judicially-created doctrine of judicial immunity and the unratified second prong of the Eleventh Amendment, must not be continued as de facto

constitutionalized policies or practices.

IV. Arbitrary Judicial Decisions, Disdain for Petitioning by the Citizenry

The denial of remedies even when they are feasible, the foxiness of one-word denials to mask both abuses and the faulty application of laws so that appeals are futile and impractical . . . all are unconscionable and thus unacceptable.

One or two solid cases against judges would surely encourage their brethren across the nation to clean up their acts. And flood of Judicial Tyranny will abate.

V. Due Process of Law in the U.S. Constitution has been Evaded by the State Court

[2]Due process under the U.S. Constitution not only restrains the executive and judicial branches, but additionally restrains the legislative branch. For Example, as long ago as 1855, the Supreme Court explained that, in order to ascertain whether a process is due process, the

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2. Due process, From Wikipedia, the free encyclopedia.

first step is to "examine the constitution itself, to see whether this process be in conflict with any of its provisions...In case a person is deprived of liberty by a process that conflicts with some provision of the Constitution, then the Due Process Clause normally prescribes the remedy: restoration of that person's liberty. The Supreme Court held in 1967 that "we cannot leave to the States the formulation of the authoritative... remedies designed to protect people from infractions by the State of federal guaranteed rights.

Justice Clarence Thomas stated as follows, in a 2004 dissent: "As an initial matter, it is possible that the Due Process Clause requires only "that our government must proceed according to the 'law of the land' — that is, according to written constitutional and statutory provisions."

In Dartmouth College v. Woodward, 17 U.S. 518 (1819). Webster argued to the Supreme Court as follows: "The meaning [of the phrase 'law of the land'] is, that every citizen shall hold his life, liberty, property and immunities, under the protection of the general rules which govern society..."

Justice Hugo Black, especially in his later years, advocated the objectivistic (as opposed to subjectivistic) interpretation: "[f]or me the only correct meaning of that ['due process of law'] is that our Government must proceed according to the 'law of the land' - that is, according to written constitutional and statutory provisions as interpreted by court decision." The terms "objectivistic" and "subjectivistic" refer here to the perspective of the judiciary, which will be either look primary to external positive law such as statues and constitutions in order to determine what is due (as objectivists), or will instead look to the judiciary's's own contrary experiences, standards, and precedents to determine what is due (as subjectivists). The essential question that this article addresses is not whether due process is substantive or procedural, but instead whether it is subjectivistic or objectivistic.

The Meaning of "Due" Is Governed By The Law of The Land. The Due Process Clause refers to a process of law that is owned to a person according to "the law of the land". Rather than according to some different set of principles and beliefs.

Justice Joseph Bradley once said that "we are

entitled, under the fourteenth amendment, not only to see that there is some process of law, but 'due process of law', provided by the State law when citizen is deprived . . ."

Bingham was the lead author of the Fourteenth Amendment, and he plainly intended for the rights that were spelled out in the Constitution to be secured by the privileges or immunities Clause against deprivation by the state.

Slaughterhouse cases, 83 U. S. 36 (1872) stated in a pertinent part:

"The protection of every citizen of the United States against hostile and discriminating legislation against him in favor of others, whether they reside in the same or in different states. If, under the fourth article of the Constitution, equality is secured between citizens of different States, under the fourteenth amendment, the same equality is secured between citizens of the United States."

See Twining v. New Jersey, 211 U.S. 78, 100 (1908); Walker v. Sauvinet, 92 U.S. 90, 93 (1875); Wayman v. Southard, 23 U.S. 1, 43 (1825); Bank of the United States v. Halstead, 23 U.S. 51 (1925);

The State Court deprived Petitioner of his rights of due process of law. For example the Circuit Court cut short the trial hearing without giving a chance for his Expert witness to testify for Petitioner while the Court gave the time to all Respondent's witnesses to testify. Trial Judge Potter was hostile and partial against Petitioner who also refused to admit into evidence his exhibits. **It was Respondent's Court and any thing Bruce A. Gross, Attorney for Respondent asked for was granted.**

With regard the Supreme Court of Virginia which did not follow the due process of law of civil procedure. Such procedure requires from this Court to review Petitioner's appeal, his motions but it did not happened. Even one of its orders was incorrect when denied motion to strike Respondent's appendix and later the attorney for Respondent admitted that the word appendix was an error in certificate of service, therefore, there was no appendix. The Supreme Court of Virginia blindly made orders without any merit and without reviewing the merit of Petitioner's appeal. This State Court violated Petitioner Civil Right and equality. This is why Petitioner filed this

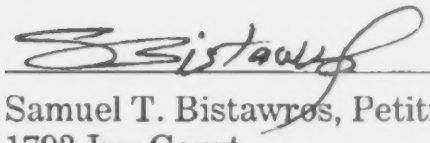
Petition to the United States Supreme Court to seek justice just one time in his life. This case is extraordinary.

CONCLUSION

This complaint here based on the misconduct of State judges. Petitioner is a layman, representing himself and such judges took advantage of him which constituted not only bad behavior and malicious conduct but also violated his human rights of equality under the Virginia Constitution, Art. I. and art. VII. And the Fourteenth Amendment to the United States Constitution. As a result due process and protection of laws are literally extinct.

For the foregoing reasons, Petitioner respectfully requests to grant the Petition of Write for Certiorari and reverse the decision of the State Court.

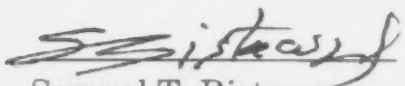
Respectfully Submitted,



Samuel T. Bistawros, Petitioner Pro Se
1793 Ivy Court
Woodbridge, Virginia 22191
Telephone:(703)492-2438
Facsimile:(703)492-2438

CERTIFICATION

I, Samuel T. Bistawros, hereby certify that I have written this Petition in a good faith and not for delay. Sworn under the pains and penalty of perjury.



Samuel T. Bistawros

EXHIBIT A

COPY

VIRGINIA: IN THE CIRCUIT COURT
OF PRINCE WILLIAM COUNTY
Thirty-First District

SAMUEL T. BISTAWROS

Plaintiff,

vs. CL73524

RODOLFO LICEA

Defendant.

(Filed on February 11, 2008)

This is [1]the transcript of the judgment of the Circuit Court because when Attorney for Defendant wrote the order of the Court, he modified it which did not match the original order. In order to look at the different issues that are involved in the motion for Directed Verdict by the Defendant in this case, you have to look for Directed Verdict by the Defendant in this case, you have to look at the two concepts to seems to me, you have to look at the two concepts it seems

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1. The Defendant had his own reporter who wrote this order of the court. Marla R. Crabtree - 17409 Celebration Way - Dumfries, Va 22055 (703)670-5018

to me, one of assault and one of battery. They are of course, argued as they have been today and sometimes there's a real overlap and interchange between the criminal cases, because much of the case law involves criminal cases and not civil cases.

The reality is the tort law changes the criminal concepts slightly, but there's still a valued principle I think to determine whether there's sufficient evidence here to allow the Plaintiff to go forward in this matter. The law has defined assault, and I get mine from Michie's Jurisprudence just as the Plaintiff has. An assault is an attempt to offer with force or violence, and there's really no evidence of force on behalf of the Defendants in this case, to do some bodily hurt to another, whether from wantonness or malice. There's no evidence of either wantonness or malice by the Defendant in this case, my means calculated to produce the end of carried into execution as by striking at him with a stick or other weapon or without a weapon, though he is not struck, and even by raising up the arm or a cane in a menacing manner or any similar act accompanied with circumstances, the noting and intention coupled with the present ability of

using violence against the person of another. The criminal law, the criminal cases, including Jones versus the Commonwealth go on to provide an assault is an attempt or offer with force or violence to do a corporal hurt to another, whether from malice or from wantonness, again no evidence of that, as by striking at him and even holding up one's fist at him in a threatening or insulting manner or pointing a weapon at him.

In Bennett versus the Commonwealth, the Court provided in order to constitute an assault, there must be an overt act or an attempt or unequivocal appearance of an intent with force and violence, none of which has been proven in this case, to do physical injury to the person of another. In other to constitute an assault, there must be an attempt with force or violence to do some bodily hurt to another whether from wantonness or malice by means calculated to produce the end if carried into execution. It is any act accompanied with circumstances, the noting and intention coupled with the present ability to use actual violence against another person. Intent to put another in fear of bodily harm with the threat of use of bodily force is an assault said the Court in Zimmerman

versus the Commonwealth.

The tort side of it amends that a bit. This common law tort definition of assault was an intention offer to touch the person of another that created in the mind of the victim a reasonable apprehension of an immediate battery.

The question here was could the Plaintiff in any way have a reasonable apprehension of battery under the evidence and the answer has to be no.

Here's a case in which the Plaintiff is standing in a public area handing out fliers. Parties are coming up reaching out to him, not saying a word, that's the testimony, and he's handing out flyers o them. The evidence is on this particular occasion the Defendant came up to him, reaching out his hand just like other passerbys, and by his own testimony that's what he was doing. He was standing there passing out flyers to passerbys. He reached out and touched the paper. There's no doubt about that.

I think under some circumstances, there could have been a scuffle. There could have been a fight. There could have been assault and battery, but he never touches the person of the Plaintiff in this case. He

touches the paper; and as soon as the Plaintiff decides he's not going to hand this paper out to this particular passerby, it's, **in fact, the Plaintiff who pulls the papers back, who contributes, if any injury is involved to his own injury by pulling the paper back and jerking them back.**

The evidence is once that happens to the Defendant, he releases the paper, and says I think one statement to him and turns around - - before that he said nothing to him. He turns around and walks away.

There's just no showing of anger and violence and hatred or any kind of malice towards this Plaintiff in any way prior to the incident. It is an allegation that he's a ormer employee, perhaps a disgruntled employee, who has Done defamatory, a derogatory flyer that he's handling out.

But according to the testimony of the Defendant, and I accept that, he comes here not out of anger. He comes here out of curiosity like everyone else. They go to the site. They get the flyer. In fact, some of the people from Christ Chapel have already gotten the flyer from him. But when this particular one steps up, he decides not

to give it and he pulls the flyer back and that's the only testimony I have. There's no evidence of prior history of any disputes or argument between these parties. It simply does not arise to the level of
constituting an assault by definition under the law.

You get to the issue of battery and, of course, assault is part of battery. Battery is also a tort. The law provides that when the injury is actually inflected, it amounts to a battery, which includes an assault. This, however small it may be, is spitting in a man's face or in any way touching him in anger without lawful provocation. The evidence here is, as I said, there's really no evidence of anger. He's testified he was curious. He was disappointed, I think he said, but he was not angry at the Plaintiff and there's no violent act towards him other than reaching out to get a piece of paper that other members of the public have done and he's provided to them, that is the Plaintiff has provided to them. A battery is thus the actual inflection of corporal hurt upon another willfully or in anger. I don't find any willfulness to injury him. I don't find any intent to injure him. I don't find any anger in this case, whether by the parties own hand or my some means

set in motion by him.

While this definition is not expressly mentioned rudeness or insult, the word willfully clearly applies that those elements as well as anger may become a test of the offense. That is to say the intended injury may be to the feeling or mind as well as to the corporal person. Hence, not every touch is a battered says the law, nor is it necessary that the touch should result in the injury to the corporal person. Whether the touch constitutes a battery will depend, not upon the amount of force applied, but upon the intent of the actor.

There's no evidence here that this actor, t h i s Defendant, intended to cause any bodily harm or apprehension of bodily harm to the Plaintiff. One cannot properly be convicted of assault and battery without an intention to do bodily harm, either an actual intention or an intention imputed by law.

The Court goes on in other cases that in order to be liable for a battery, an actor must act with the intention of causing a harmful or offensive contact with a person. Just as important in the case of Peterson - - or Perkins rather versus the Commonwealth, the Court said a

touching is not unlawful if the person consents or if the touching is justified or excused. Here's a situation where a man is handing out papers in a public place. Another individual comes up and takes the paper, touches the paper; and that alone is a consensual act, it seems to me, by the Plaintiff, not an act by the Defendant of any violence or malice or ill will toward the Plaintiff.

I'm going to, given the totality of the circumstances and the evidence before me today and the status of the law in the Commonwealth, I'm going to sustain the Motion for a Directed Verdict for the Defendant. I'll order that **the** [2]Amended Motion for Judgment filed by the Plaintiff in this case be dismissed. I will ask council for the Defendant to prepare an order and we'll set down of Friday for entry Of that order. I'll also ask the law clerk to contact the attorney who represents the physician so that he'll be notified his attendance will not necessary tomorrow.

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2. While Attorney for Defendant wrote a different order reads as follows: "Accordingly, it is ADJUDGED, ORDERED and DECREE that the Amended Motion for Judgment filed herein by the Plaintiff against the Defendant is DISMISSED with prejudice. In the transcript Judge Potter never said the word Prejudice.

VIRGINIA: IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

SAMUEL T. BISTAWROS, Plaintiff,

vs.

RODOLFO LICEA, Defendant,

ORDER

THE MATTER came before the Court on February 11, 2008 for hearing on the Plaintiff's First Amended Motion for Judgment against Defendant. The Plaintiff SAMUEL T. BISTAWROS was present before the Court, as was the Defendant and his Counsel.

The Court, having observed the Plaintiff and heard his testimony, and having observed and heard the testimony of the Defendant and his three additional witnesses, finds the following facts:

1. This matter arises from Plaintiff's conduct on December 18, 2006, wherein Plaintiff positioned himself at a Wal-Mart [3]parking lot and distributed flyers to the

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3. Parking lot was only designed for the traffic of cars which were going in or out and it would be dangerous for Plaintiff to stand there. The matter of fact he was standing on sidewalk in front of the

general public. Trial testimony describing these flyers indicates that the flyers were, at minimum, derogatory to Plaintiff's former employer, Christ Chapel Academy, and also the [4]Christ Chapel Assembly of God Church;

2. Plaintiff offered his flyers by extending copies to any and all passersby who desires to receive a copy;

3. Defendant, who was at the church for reasons unrelated to Plaintiff's activities, heard of Plaintiff's action.

In response to what he had heard, Defendant was curious to see what was in the flyers. Defendant went to the Wal-Mart parking lot by car to receive a copy so that he could see the content of the flier;

4. Defendant parked his car approximately yards from where Plaintiff stood; exited the car; and walked to Plaintiff;

5. Plaintiff initially offered a flyer to Defendant, as a passerby, in the same manner as he offered copies

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door of Wal-Mart Store where customers were shopping coming in or out of the Store.

4. Defendant Rodolfo Licea was a member of this Church.

to other passersby – he held the flyer in his outstretched hand. The Defendant touched the flyer but he neither touched the Plaintiff's person nor did he pull the flyer away from Plaintiff's hand in any manner;

6. Wherefore, in relation to the Plaintiff's allegations extended his right arm to offer Defendant one of the flyers; against the Defendant, Plaintiff stood in [5]front of Wal-Mart, held a group of flyers in his left arm, and he

7. Defendant simply walked up tc the Plaintiff and reached out his right hand to receive the flyer being offered by the Plaintiff;

8. Defendant touched the flyer, but when the Plaintiff recognized the Defendant, the Plaintiff quickly withdrew the flyer and [6]clutched it to his chest;

9. When Plaintiff withdrew the flyer, the

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5. This statement was true which contradicted that Plaintiff positioned himself at a Wal-Mart Parking lot and distributed these flyers which was an evidence that trial Judge Potter contradicted himself in the Order of the Court.

6. Transcript statement of te Order: "it's , in fact, the Plaintiff who pulls the papers back, who contributes, if any injury is involved to his own injury by pulling the paper back and jerking them back.

Defendant offered no resistance whatsoever and turned around and walked back to his car; and

10. The Plaintiff retained possession of the flyer and there was no struggle or force used by the Defendant to take the flyer from the Plaintiff;

11. The Court further finds that there was never any prior dispute, disagreement or argument between Plaintiff and Defendant prior to December 18, 2006; and

12. Defendant did not act with any wantonness, anger, force, violence, malice, or with any intent to injure the Plaintiff when he extended his hand to receive a copy of Plaintiff's tendered flyer.

UPON CONSIDERATION of the totality of the evidence and the law of the Commonwealth of Virginia, even in the light most favorable to the Plaintiff, the Court finds as follows:

13. There was no unlawful touching of the Plaintiff's by the Defendant where, as here the Plaintiff was handing out flyers in front of Wal-Mart to members of the public. The evidence was that not only the Plaintiff consent to the Defendant's touching of the

flyers, but by his conduct he invited the Defendant to take the flyer and any such
reasonable touching by the Defendant was therefore justified and executed.

14. There was not assault by the Defendant against the Plaintiff; the touching of the flyer by the Defendant was reasonable; there was no evidence that the Defendant intentionally offered to touch the person of the Plaintiff; there was no evidence of any attempt or offer, with force or violence, by the Defendant to do any bodily hurt to the Plaintiff, whether from any wantonness or malice, by means calculated to produce
the end if carried into execution by the touching of the flyer in the Plaintiff's hand, which in any way denoted an intention coupled with a present ability of using violence against the Plaintiff; and while the Plaintiff need not present evidence of present ability for tort of assault, there was no evidence of any intentional offer by the Defendant to touch the person of the Plaintiff that could have created in the mind of the Plaintiff a reasonable apprehension of an immediate battery; there was simply no reasonable basis under the circumstances of this case

for the Plaintiff to have any apprehension of receiving an immediate battery; there was simply no reasonable apprehension of an immediate battery; there was simply no reasonable basis under the circumstances of this case for the Plaintiff to have any apprehension of receiving an immediate battery by the Plaintiff;

15. There was no battery and no assault and battery of the Plaintiff by the Defendant; the touching by the Defendant of the flyer offered by the Plaintiff was not done willfully or in anger; it was not done in the spirit of rudeness or insult; that there was not even the slightest touching of the corporeal person of the Plaintiff and no reasonable basis for any claim of injury to the feelings or mind of the Plaintiff; and while it is not necessary for the Plaintiff to prove that the Defendant intended to harm the Plaintiff, there is no evidence that the Defendant acted with intent to cause any harmful or offensive contact to the Plaintiff.

16. Plaintiff, by his own decision to pass out flyers to all passersby in a public place, and his actions in furtherance of his decision in extending such flyers to the public at a Wal-Mart parking lot, consented to the

reasonable action of any and all passersby, including Defendant, to accept the proffered flyers; and the court finds that the touching by the Defendant of the flyer was not unlawful because the Plaintiff consented to it, and because, under these Circumstances, it was justified and executed;

17. The reasonable actions by the public, including Defendant, included approaching Plaintiff and touching the flyers as a part of the act of receipt;

18. Such conduct in touching a flyer does not and would not offend any person of normal intelligence and sensibilities; and

19. Defendant therefore did not commit any tort of assault, battery, or assault and battery against Plaintiff on December 18, 2006, at Wal-Mart parking lot in Woodbridge, Virginia.

Accordingly, it is ADJUDGED, ORDERED, and DECREED that the Amended Motion for Judgment against the Defendant is DISMISSED with [7]prejudice

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7. In the transcript of order of thee Court, there no mention of word "prejudice". It was added by Counsel for Defendant when he wrote the order for the Court.

AWARD OF ATTORNEY'S FEES AND COSTS

The Defendant has previously requested an award of Attorney's fees and costs pursuant to Code 8.01-271.1, and Defendant reiterated this request after the Final Hearing in this matter on February 11, 2008. The Court notes Plaintiff has filed pleadings and numerous motions in furtherance of such pleadings. Plaintiff has pursued this litigation against Defendant, and Plaintiff's various Motions required Defendant's Counsel's presence at numerous Motions Day Hearings. The Court also finds that the Plaintiff has acted with the
intention to obstruct Defendant's proper discovery of Plaintiff's medical history, and without justification, he delayed a Court-Ordered Independent Medical Examination, all during the course of this litigation. Having considered the affidavit by Defendant's Counsel in support of such request and the extensive pretrial proceedings, the conduct of the trial and the merits of this case, it is ADJUDGED, ORDERED and DECREED that the Plaintiff shall pay to the defendant the Sum of $5, 940.85 as and for a reimbursement for his attorney's fees and cost; and See page 7 Attachment.

THIS MATTER is final ENTERED this 15th day of February, 2008.

_____

Richard B. Potter, Circuit Court Judge

**The Court makes the following findings as well:

1. That as stated in the order of this Court entered herein on February herein on January 4, 2008, the Plaintiff has repeatedly and intentionally interfered with the efforts of the Defendant to complete discovery.
Plaintiff did so by, among other things, refusing to appear for his court ordered medical examination. Plaintiff also sent a letter to his medical insurance provider advising them not to answer Defendant's subpoena duces tecum to disclose his medial
records after the court has expressly ordered disclosure as relevant to the case.

2. That the numerous pre-trial motions filed by the Plaintiff contained many inaccurate and improper accusations toward the Defendant and his

counsel.

3. That the Defendant also violated the Uniform Pretrial Scheduling Order entered in this case on October 26, 2007 by filing his list of Witnesses and Exhibits after the time period prescribed in that order.

4. That these actions by the plaintiff were interposed for an improper purpose, that is to say, interposed by the Plaintiff to harass the counsel, to cause unnecessary delay and to increase the cost of litigation for the Defendant, in all in violation of Virginia Code 8.01-271.1.

The Court, therefore orders the Plaintiff to pay the Defendant reasonable attorney's fees in the amount of $5, 940.85, as shown as circled by the Court on Defendant's Attorney's fee Affidavit, Exhibit A. filed herein.

IN THE SUPREME COURT OF VIRGINIA

Samuel T. Bistawros, Appellant

Record No. 080926

vs.

Circuit Court No. CL73524

Rodolfo Licea , Appellee

(Filed on Sept. 18, 2008)

Upon a Petition for Rehearing, On consideration of the petition of the appellant to set aside the judgment rendered herein on the 31st day of July, 2008 and grant a rehearing thereof, the prayer of said petition is denied.
By Patricia L. Harrington, Clerk

IN THE SUPREME COURT OF VIRGINIA

Samuel T. Bistawros
Appellant,
vs.
Rodolfo Licea
Appellee.

Record No. 080926
Circuit Court No. CL73524

(Filed on June 13, 2008)

From the Circuit Court of Prince William County

On June 13th, 2008 came the appellant, in proper person, and filed a "request for Emergency hearing of

appellant's motion for injunction pending appeal" in this case.

Upon consideration whereof, the Court denies the relief requested in appellant's motion.

By Patricia L. Harrington, Clerk

IN THE SUPREME COURT OF VRGINIA

Samuel T. Bistawros,

Appellant, Record No. 080926

vs. Circuit Court No. CL 73524

Rodolfo Licea,

Appellee

(Filed on June 25, 2008)

From the Circuit Court of Prince William County

On June 25, 2008 came the appellant, in proper person, and filed a "motion to vacate order of trial court pending appeal" in this case. Thereupon came the appellee, by counsel, and filed response thereto. Upon

consideration whereof, the Court denies the motion.

By: Patricia L. Harrington, Clerk

IN THE SUPREME COURT OF VIRGINIA

Record No.080926

Samuel T. Bistawros, Circuit Court No. CL73524

Appellant,

vs.

Rodolfo Licea,

Appellee

(Filed on July 31st, 2008)

From the Circuit Court of Prince William County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the

petition for appeal.

On further consideration whereof, the Court denies the "motion to strike" appellee's [1]appendix pending appeal.

By: Patricia L. Harrington, Clerk

EXHIBIT B

VERIFICATION OF TREATMENT

Kaiser Permanente

Samuel T. Bistawros

381217530

1/12/2007

The patient received treatment for this disability/illness on 1/12/2007

PHYSICAL FINDING: LEFT SHOULDER SPRAIN WITH EVIDENCE OF CALCIFIC TENDINITIS.

Sub Acromia Space INJECTION TODAY. MAY REQUIRE REPEAT INJECTIONS AS NECESSARY FOR RECURRENT PAIN.

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1. Douglas Robelen, Chief Deputy Clerk found that there was no appellee's appendix and attorney for appellee confirmed such finding that the "appendix" was an error.

Provider Signature_____

Provider Number 7562

Printed name: _____

Brian Stephens MD. FACS

Orthopaedic Surgeon

Springfield #7562

I hereby certify that I have reviewed, understand and agree to the information above, and I authorize the release of this information to my employer or any other person or entity that may be responsible for payment of service rendered.

Provider Signature _____

Provider No. 7562

Orthopedics Springfield

6501 Loisdale Court

Springfield, VA 22150

[2]EXHIBIT C

Christ Chapel Academy
13909 Smoketown Road
Woodbridge, VA 22192
(703) 670-3822

December 15, 2006

Mr. Samuel Bistawros
1793 Ivy Court
Woodbridge, VA 22191

Dear Mr. Bistawros

On August 14, 2003 you signed an application for employment at Christ Chapel Academy. You agreed to be bound by the statement of faith, code of discipline, religious tenants, constitution bylaws and all written policies of Christ Chapel Academy and to refrain unscriptural conduct. Your contract specified that you

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2.This Exhibit dated December 15, 2006 was an evidence that Christ Chapel had two copies of Appellant's flyer or/and letter about the abusive treatment to him. The Christ Chapel Academy had a copies of Appellant's letter on December 7, 8 & 12, 2006. Respondent Rodolfo Licea must read this letter. So when he came to Appellant on December 18, 2006, did not come to get a copy of such letter, but he came from Christ Chapel and attacked Appellant causing serous permanent injury to him.

would serve as aChristian role model and as an example "to parent and follow faculty members in judgment, dignity, respect and Christian living." You also agreed to accept Educational Philosophy and Objectives of the schooland committed to upholding them. These expectations were also set forth in the teacher job description. In addition, you agreed in the contract to follow the biblical pattern of resolving differences with others.

The contract also provides in paragraph 20 that the school may terminate employment for any conduct tending to reflect discredit upon the school or for actions seriously impairing service as a Christian Role Model.

I am writing to notify you that your contract is hereby terminated because of defamatory and unprofessional conduct and statements regarding the , failure to follow biblical methods of resolving differences and conduct reflecting discredit upon the school and staff members. **You have set forth numerous statements in a letter describing Christ Chapel Academy as "an evil environment of Witchcraft, Maltreatment of Children, Sexual Harassment, Hostility, Discrimination,**

Disparate treatment, Deception." Your name appears at the top of page one and the bottom of page two.

Copies of this letter were obtained from an individual who received it from you on December 7, 2006 and from another family who received it from the corner of Smoketown Road and Prince William Parkway on December 12, 2006.

Additionally, I was shown a copy of the same letter by another member of Christ Chapel, who received it from you on December 8, 2006.

The content of your letter is completely unprofessional, demonstrates a complete lapse in "judgment, dignity, respect and Christian living" and fails to utilize the required Biblical principles for resolving differences as set forth in your contract and related materials. The teacher contract makes clear that "all differences are to be resolved by utilizing Biblical principles – always representing a united front." The contract further provides that "the parties to this agreement are Christians and believe that the Bible commands them to make every effort to live at peace

and resolve disputes with each other in private or within the Christian community and conformity with Biblical injunctions of I Corinthians 6:1-8, Matthew 5:23-24, and Matthew 18:15-20." Rather than meet with me to address any possible concerns you may have had, you have completely ignored the above Biblical principles and contract requirements for addressing the resolution of any concerns, set an extremely poor example for the families of the school and the very students we are trying to teach, and demonstrated that you cannot support or uphold the philosophy and Objectives of the school.

You have distributed to the public at large a letter making highly offensive and defamatory remarks about Christ Chapel Academy and staff which simply cannot be tolerated.

You are hereby informed that you are not to return to Christ Chapel/Christ Chapel Academy premises. If you choose to request a meeting we will make suitable arrangements at that time. Additionally, you should refrain from making any further attempts to distribute this or any other defamatory and offensive

materials to others. Please be advised, that if you continue to distribute such materials, the school will have to consider all available options.

We do wish you the best in your future endeavors and pray that God would provide the necessary guidance and direction as you prayerfully consider any future opportunities.

Sincerely,

Pastor Paul Miklich
Principal/Administrator

VIRGINIA: IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

Samuel T. Bistawros

Plaintiff,

CL73524

vs.

Rodolfo Licea

Defendant

JUDGMENT AWARDING FEES AND COSTS TO DEFENDANT

WHEREAS this matter was tried before the Court on February 11, 2008 on Plaintiff's allegation of assault and battery by the Defendant with resulting Final Order of February 15, 2008, in favor of the Defendant; and

WHEREAS Plaintiff submitted a Petition or Appeal of the decision of this Court to the Virginia Supreme Court, an Appeal denied on July 31, 2008; and

WHEREAS Defendant by appropriate Motion on August 15, 2008, invoked the jurisdiction of this Court under Rule 1:1A of the Rules of the Virginia Supreme Court to reinstated this cause on the Court docket and to grant him reimbursement for the appellate attorney's fees and costs incurred due Plaintiff non-meritorious Petition for Appeal; and

WHEREAS this court granted said motion, reinstating the matter on the docket, finding the Motion proper and the amount of $8,244.56 reasonable and appropriate, but withholding entry Judgment until the Supreme Court acted upon Plaintiff's aforesaid Request for Reconsideration; and

ADJUDGED AND ORDERED that the Defendant, Rodolfo Licea, shall be awarded a Judgment against the Plaintiff, Samuel Bistawros, and the Defendant shall be entitled to collect the sum of Eight thousands two hundred forty four dollars and 56/100 cents ($8, 244, 56) with lawful interest thereon from the date of this Judgment Order.

THIS MATTER is final.

ENTERED this 26th, day of September, 2008

Richard B. Potter, Circuit Court Judge

V I R G I N I A : IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

SAMUEL T. BISTAWROS,

Plaintiff CL73524

vs.

RODOLFO LICEA,

Defendant.

PLAINTIFF'S OBJECTIONS TO DEFENDANT'S MOTION FOR ATTORNEY'S FEES AND COSTS

I. THE COURT DID NOT HAVE THE ORDER OF SUPREME COURT OF VIRGINIA

Defendant claimed in his motion, page 2, line 3 Stated:

"WHEREAS the Supreme denied Plaintiff's Request for Reconsideration on September 18, 2008" But Defendant did not support his claim with a copy of such order in his motion. Plaintiff did not receive a copy of said order as well. This order shall be Certified or notarized to assure that it was authentic. So, there was no evidence that So, there was no evidence that such order exist.

See Wilshire v. Pollard, 220 Va. 678, 261 S.E 2d 542 (1980); Moore v. Goode, 180 W. Va. 78, 375 S.E.2d 549 (1988); Cramer Cramer v. West Va. Depot of Highway, 180 W. Va 97, 375 S.E.2d 568 (1988).

II. THE MISCONDUCT OF PATRICIA HARRINGTON, CLERK OF SUPREME COURT

On Monday, August 18th, 2008, at 12:50 p.m., Plaintiff/Appellant talked via telephone to Patricia L. Harrington, Clerk and asked her about the names of Justices who issued three Orders in his appeal.? Further he said to her: "If I give you the record number will you give me their names?" She said that she would look at the file. Then she changed her mind and said: "We are not allowed to give their name." Plaintiff/Appellant said to her that if he wanted to file a motion of disqualification of Justice(s), he needed to know each me. Her answer was that he wrote to the Clerk and she would forwarded to the Justices. And she added that this was the policy of the Court for the last twenty (20) years.

But the rule is that when the Court rendered its opinion, the names of Justice were written in on the top of their opinions as well all names of Justice. On August 18, 2008, Plaintiff/Appellant wrote a letter to Gregory E. Lucyk, Chief Attorney Staff asked him about the name

of Justices of the Panel who wrote their opinion in his appeal but he did not hear from him.

III. THE RECORD OF THE CASE WAS NOT RETURNED TO THE CIRCUIT COURT

If there no further proceeding The Clerk of Supreme Court of Virginia should returned the record to Circuit Court which contained Five Volumes of documents and in order for this Court render a fair and just order in Defendant's motion, it must have such record. Also there is a question that if the Circuit Court has jurisdiction over the action without the Record. See William A. Dunbar vs. Caroline Dunbar et al. 5 W. Va. 567; 1872 W. Va. LEXIS 69; William vs. Gale & others, 4 Gratt. 180; M'Laughlin v. Janney & als. 47 Va. 609; 1850 Va. LEXIS 10; 6 Gratt. 609.

V. THE ATTORNEY'S FEES OF BRUCE A. GROSS WERE FRAUDULENT, FABRICATED, EXCESSIVE, UNREASONABLE AND UNNECESSARY

Attorney for Defendant/Appellee repeatedly filed several motions for attorney's fees which would be a contempt of court for attorney's after fees which fees

which would be a contempt of court after ruling of trial court on his first motion. Plaintiff reviewed Affidavit of the list of his fees in court file and found that there were Sixty-nine (69) items of attorney's fees either Fabricated, excessive and unreasonable and unnecessary. In the Affidavit of Attorney's fees hourly fee was $295.00. This were some of the fraudulent following list of Attorney's fees: **Hours**

1. Page 18, line 12. 12/4/07 Medical review by Dr. Nirschl Orthopaedic Center.....**$1, 200.00**
but Dr. Nirschl' s bill was..... **$726.19**
2. Discussions with Bill Roberts who had nothing to do with the action 0.33
3. 3/21/07 BAG Telephone call from Judge Potter's Law Clerk.....0.20
4. 3/21/07 BAG ...Bill [3]Roberts.....050
5. 3/28/07 JLM Telephone from opposing party.....0.17
6. 3/29/07 BAG review email message from Pastor

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3. Bruce A. Gross, Attorney for Respondent did not any relevancy to the Civil action of contacting this Pastor so many times.

Roberts 0.40

7. 4/18/07 BAG Review case file.....50

8. BAG Review copy of letter from Bistawros to Paul Miklich.....033

9. JLM Organize litigation binder..... 0.25

10. 4/20/07 BAG Court appearance for hearing.....2.00

11. JCS Research of Circuit Court record.....50

12. 5/3/07 JLM Internet research on Plaintiff..... ....0.50

13. 5/4/07 BAG Review materials.....25

14. 6/14/07 JLM Received new pleadings... Mailed to Pastor Roberts.....017

15. 7/9/07 BAG . .follow up with client and Pastor Roberts.....40

16. 8/8/07 JLM Brief telephone call.....0.20

17. 10/8/07 JLM Prepare praecipe.....50

19. 10/29/07 BAG Email to client.....033

20. JLM finalized order.....50

21. 1/19/07 BAG Court appearance for entry order....0.75

22. 11/14/07 JCS Telephone Conversation..... 1.25

23. 11/21/07 JCS Write a letter 0.50

24. JLM Call Workers comp.....0.10

25. JLM Prepare notice.....50

26. 1/30/07JCS Write a letter to Dr. [4]Nirschl.....0.25

27. 12/3/07 JLM ...finalize and send a letter to Dr. Nirschl re IME.....1.00

28. 12/4/07 JLM Letter to [5]Kaiser Permanente.....0.58

29. 12/6/07 BAG Travel to Workers' comp. Hearing.1.50

30. JLM Finalize and file Notice & Motion.....0.83

31. JLM Obtain copy of all Bistawros current lawsuit lawsuit.....1.00

32. met with BAG and JCS.....2.50

33. 12/14/07 BAG Court appearance.....1.50

34. 12/17/07 JLM Receipt of Potomac Hospital medical record.....067

35. 12/18/07 JLM Conference with JLM.....0.25

36. JLM Telephone call.....0.33

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4. Dr. Nirschl was an Independent Physician was hired by Appellee to examine Plaintiff but his Attorney's Bruce A. Gross added such attorney's fees to be paid by Plaintiff.

5. Bruce A. Gross, Attorney for Defendant made a frivolous discovery and Plaintiff should not paid for Attorney's fees and costs.

37. JCS Trip to courthouse.....0.33
38. JCS prepare Motion to Dismiss.....1.50
39. JLM Telephone call with Kaiser.....0.33
40. 1/2/08 BAG . . . follow up with Dr. Nirschl's office.....0.33
41. 1/3/08 BAG Conference with JCS.....0.25
42. 1/4/08 JCS Write letter to Dr. Nirschl.....0.25
43. BAG Appearance in circuit court.....2.50
44. 1/4/08 JLM Copy medical Records.....2.00
45. JCS Travel to office of Nirschl to deliver massive Medical records.....1.50
46. JLM Finalize letter to Dr. Nirschl 1.00
47. 1/8/08 BAG Review Records.....1.00
48. JCS Phone call.....2.00
49. 1/10/08 BAG Work with JLM and JCS.....1.00
50. 1/11/08 JCS Telephone call with Natalie at Dr. Nirschl's Office.....0.08
51. BAG Review Statement of Facts.....0.25
52. 1/16/08 BAG Review transcript of Workers' Comp. 0.33
53. 1/17/07 BAG review and revised draft letter to Pastor Bill Roberts 0.33

54. JLM Review additional Kaiser Permanente Records.....0.33
55. 1/22/08 JCS wrote letter to Dr. Nirschl.....25
56. BAG Review Email message 50
57 1/23/08 BAG Prepare document 1.00
58. 1/24/08 BAG Review and respond to Email 0.42
59. 1/25/08 BAG Prepare for and Court appearance.. 2.50
60. 1/29/08 BAG Conferenc with JCS and JLM.....1.75
61. JLM Meeting with JCS and BAG.....1.00
62. 1/31/08 BAG office visit with....(no name).....1.00
63. 2/1/08 BAG Discussion with JCS re witness.....0.33
64. JCS Extensive review.....1.50
65. BAG Work with JCS and JLM..... 3.00
66. 2/7/08 BAG Review Chris Chapel Employment Record.....0.75
67. BAG Trial preparations; Interview with Mrs. Roberts.....1.50
68. BAG Telephone interview with Paul Miklich.....1.50
69. 2/10/08 BAG Trial preparation and conversation with Chris Licea.....4.50

A. FALSE ATTORNEY FEES UNDER OATH CONSTITUTED PERJURY

In case of Virginia State Bar, ex rel, v. Randolf Lawrence Carl, Case No. LS-2513-3, Mr. Carl, Attorney spent five (5) minutes talking with the client before the hearing, and he spent five (5) minutes in the hearing as the legal clerk observed.

But Mr. Carl submitted a receipt I indicating that he spent two (2) hours outside the court and one (1) hour in court, a total of three (3) hours. But the court did not approve Mr. Carl's fees.

And Rule 8:4 of Misconduct states that it is professional misconduct for a lawyer to commit criminal or deliberatel wrongful act that reflects adversely on the lawyer's honesty, trustworthiness See Virginia State Bar v. Christopher Leon Anderson, VSB Docket No. 04-032-0873, and Code of Virginia § 54.1-3953, § 54.13900.01, § 54.1-35 & § 54.1-3936; Code of Virginia § 54-3953 & § 54.1-3900.1, § 54.1-35.

In the Affidavit of Attorney's fees, Bruce A. Gross, Attorney for Defendant knowingly and willfully listed his Attorney's fees under oath which were and false constituted the crime of perjury which have been material in judicial proceedings.

B. RATIONAL OF ATTORNEY'S FEES

In case of Kemp v. Miller, 166 Va. 661, 186 S.E 99 Va. 161 (1936)."The general rule was developed because Adhere to fixed standard by which the honorarium an be measured some counsel demand more than some clients are willing to pay more than others. More counsel may be employed that other party there is a damage of abuse.

C. FEDERAL COURT OF ATTORNEY'S FEE

Federal Courts also follow the American Rule, which provides that, absent a contrary provision of statute, rule of court, or contract, or a contrary requirement of applicable state law, the prevailing party in action in federal court is not entitled to counsel's fees. See Targa v. Targa, 118 F. 3d 1006 (4th Cir. (1997);

TransDulles Center, Inc. v. USX Corp., 976 F. Corp., 6 F.2d 219 (4th Cir. 1992).

D. CATALYST THEORY THAT HAD BEEN ADOPTED BY NINE DISTRICT COURTS

In Buckhannon Board & Care Home, Inc. Et al v. West Virginia Department of Health and Human Resources, et al No. 99-1484,___U.S. ____(2001), resolved a conflict among the federal circuit courts, rejecting the "catalyst theory" that had been adopted by nine of those courts. The Buckhannon Facility, then asked the District Court for attorney's fees as the "prevailing party" under the fee-shifting provisions contained in the FHAA and ADA,The facility based its title on the "catalyst theory", which holds the plaintiff as a "prevailing party" . . . The District Court denied the facility's request for attorney's fees, following Fourth Circuit precedent refusing to recognize the catalyst theory. The Fourth Circuit affirmed the District Court's decision, and the Supreme Court granted the facility's petition for certiorari. The Supreme Court affirmed the Fourth Circuit's decision, holding that the catalyst theory is not a permissible basis for the award of attorney's fees under

FHAA and ADA.

The Court held that "[I]n the United States, parties are ordinary required to bear their own attorney's fees – the prevailing party is not entitled to collect from the looser. "Under this "American Rule", Courts follow a general practice of not Awarding attorney's fees to a prevailing party absent explicit statutory.

Therefore Respondent the prevailing party was not entitled to attorney's fees from Appellant. And on the other hand Bruce A. Gross, attorney for Respondent committed perjury which was a criminal offense. Bruce A. Gross, Attorney for Defendant did not provide the court with invoices or receipts of each item of fees stated in his Affidavit of his hourly charges. His hourly charges were false which reflected on him that he was not trustworthy and honest and is not fit to practice law. His gratuitous affidavit was submitted to the trial court which he willfully and knowingly submitted his false fees under oath which constituted perjury.

Code of Virginia § 18.2-434, § 18.2-435 and §18.2-436.

Therefore Appellee's attorney's fees were false and he was not entitled that Plaintiff paid them and on the other hand Bruce A. Gross committed perjury which was a criminal offense.

V. DEFENDANT'S FRIVOLOUS DISCOVERY AND ATTORNEY'S FEES OF BRUCE A. GROSS

Rules 6:2-3.4 of Supreme Court of Virginia states in relevant part: "A lawyer shall not: (e) Make a frivolous Discovery request or fail to make reasonable diligent effort to comply with a legally proper discovery request by an opposing party." Bruce A. Gross, Attorney for Defendant Rodolfo Licea made frivolous discovery which was irrelevant to the causes of action in the civil case. Such frivolous discovery was irrelevant to the causes of action. Such frivolous discovery was a waste to the judicial's economy. Here were the examples:

1. About one thousands (1,000.00) pages of Plaintiff's Medical Record from Kaiser Health plan Foundation, Mr. Gross charged two hours of $590.00 for making copies which was excessive and false. He could made the same copies at Staples Store which less than a

mile away from his office and the charge was Eight (8) Cents a copy multiplied by 1000 copies which is equal to $80.00.

2. Mr. Gross charged One hour and thirty minutes, charged fees of $422.00 to deliver to Dr. Nirschl, MD. Medical record while he could sent them by mail which would cost up to Twenty (20.00) Dollars.

3. Copies of Appellant's Medical Records from Potomac hospital in Woodbridge Virginia, about forty (40) pages.

4. Transcript of the hearing on December 6, 2007 before Virginia Workers' Compensation office in Manassas, Virginia about Seventy (70) pages;

5. Appellant's employment's record from Christ Chapel Assembly of God, about forty (40) pages;

6. A lawsuit of Plaintiff against Christ Chapel Assembly of God, about seventy (70) pages.

7. A lawsuit of Plaintiff against Kaiser Health Plan Foundation, etc, about sixty (60) pages.

8. A lawsuit of Plaintiff against Barber College, about twenty (20) pages Appellant sent Bruce A. Gross,

Attorney for Appellee copies of such three lawsuits but he ignored these copies and searched the court files and made his own copies in order to charge attorney's fees.

Appellant believed that the intention of Bruce A. Gross made this frivolous charging outrageous Attorney's fees which were false and unlawful under oath that constituted perjury pursuant to Rule 4:1 (a), Rule 6:2-4.1; Rule 8:4 (a), (b)& © and Rule 6:2-1.5 and Code of Virginia § 29.1-702.1, § 46.1-702.1 Such Attorney's fees for frivolous discovery were fraudulent designed by Bruce A. Gross, Attorney for Appellee knowingly and willfully to mislead the parties involved in this action and to charge false attorney's fees. Therefore Attorney Bruce A. Gross's Affidavit for Attorney's fees were false under oath should be disapproved. The plain meaning of the Virginia statute is that if declarant under oath makes a false assertion about any material fact, the declarant can be prosecuted for perjury for that material fact, the declarant can be prosecuted for perjury for false that false assertion each separate material matter or things in the sworn Statement that is falsely stated gives rise to a separate

violation, and thus, multiple acts of perjury my occur on "One occasion" To constitute the crime of perjury, the oath must have been willful and false. Falsity is the main ingredient of perjury. Also, the convict of one perjury he alleged declarant ent must have been material in the judicial proceedings in, in which it is proved to have been made."

Code of Virginia 18.2-434 states in pertinent part:

"If any person to whom an oath is lawfully administered on occasion willfully swear falsely on such any occasion touching any material matter or thing...or if any person in any written declaration, certificate, verification, or a statement under penalty of perjury pursuant to §8.01-4.3 willfully subscribes as true any material matter which he does not believe is true, he is guilty of perjury...".

See Commonwealth v. Simon, 11 Va. L. Reg. (N.s.) 349 (1925); Commonwealth v, Calvert, 3 Va. (1 Va. Cas.) 265 (1809);Commonwealth v. Pickering, 49 Va. (8 Gratt.)628 (1851)Crump v. Commonwealth 75 Va. 922 (1882); Rhodes v. Commonwealth, 78 Va. 692 (1884); Fith v. Commonwealth 92 Va. Roach, 42 Va. (1 Gratt.) 561 (1944); Scott v. Com., Va. App. 294, 416 S.E.2d 47 (1992);

Hall v. United States, 30 F. Supp. 2d 883 (E.D. Va. 1998); Layton v Com., 185 Va. 371, 38 S.E.2d 485 (1946); Conner v. Com., 4 Va. (2 Va. Cas.) 30 (1815); Com., v. Stockley, 37 Va. (10Leigh) 678 (1840); Thomas v. Com., 41 Va. (2 Rob. 795 (1843); Com. v. Litton, 47 Va. (6 Rob. 795 (1849); Stofer v. State, 3 W. Va. 689 (1869); Crump v. Com., 75 Va. 922 (1882); State v. Crowder, 146 W. Va. 810, 123 S.E.2d (1961); State v. Wade, 174 W. Va. 381, 327 S.E.2d 142 (1985; Com. v. Simon 11 Va. L. Reg. (N.S.) 349 (1925); Mendez v. Com., 220 Va. 97, 255 S.E.2d 533 (1979); Ganzie v. Com., 24 Va. App. 422, 482 S.E.2d 863 (1997).

Affidavit of Bruce A. Gross, Attorney for Defendant was the ultimate evidence of his perjury. Bruce A. Gross violated the rules of Professional conduct.

FOR THE FOREGOING REASONS, Plaintiff Respectfully Requests:

1. Review the Affidavit of Attorney's fees of Bruce A. Gross;

2. Reverse previous Court order awarding Defendant Attorney's fees;

3. Deny Defendant's Motion for Attorney's fees; and

4. For other and further relief as this Honorable Court deems fair and appropriate.

RESPECTFULLY SUBMITTED BY

Samuel T. Bistawros, Plaintiff
1793 Ivy Court
Woodbridge, Virginia 22191
(703)492-2438

DATED: September 22, 2008

CERTIFICATE OF SERVICE

I, hereby certify that a true copy of Plaintiff's's objections to Defendant's motion for attorney's fees and cost sent via US first class mail, postage prepaid on September 22nd, 2008 to: Bruce A. Gross, 9431 Main Street, Manassas, Virginia 22191

Samuel T. Bistawros